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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 169.

THOMAS M. RIGGINS, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

FILED JANUARY 27, 1903.

(19,616.)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 5, 1905.

1 THE UNITED STATES OF AMERICA,
Northern District of Alabama, Northern Division.

Pleas had at a regular term of the United States circuit court, in and for the northern division of the northern district of Alabama, begun and held at the United States court rooms, in the city of Huntsville, in said division and district, on the second Tuesday in October, (it being the eleventh day thereof) in the year of our Lord, one thousand nine hundred and four, and of the Independence of the United States of America, the one hundred and twenty-eighth year—present, Hon. Thos. G. Jones, United States district judge, in and for the northern and middle districts of Alabama, presiding, Hon. Thos. R. Roulhac United States attorney, N. L. Steele and W. H. Standifer, assistant United States attorneys, D. N. Cooper, United States marshal, and Chas. J. Allison, clerk—among other proceedings had were the following:—

2 In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

THE UNITED STATES
vs.
THOMAS M. RIGGINS. } Order Remitting Cause to Circuit Court.

The indictment in this cause having been found in and presented to the district court of the United States in and for the northern division of the northern district of Alabama, and the said indictment being for a capital offence, it is ordered by the court that said indictment be remitted to the next session of the circuit court of the United States in and for the northern division of the northern district of Alabama, and that this order be entered upon the records of the court.

In open court, this 24th day of October, 1904.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

THE UNITED STATES
vs.
ROBERT POWELL and THOMAS RIGGINS. } Order Granting Severance.

In the above stated cause comes the attorney for the United States and moves the court for a severance in said cause as to the said Robert Powell, and Thomas Riggins, and the said motion being duly considered by the court, it is hereby granted, and a severance is hereby ordered in said cause as to the said Robert Powell, and Thomas Riggins.

In open court, October 26th, 1904.

1—169

3 In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

UNITED STATES
vs.
THOMAS M. RIGGINS. } Petition of Thomas M. Riggins, Defendant.

To the honorable the judges of said court:

Your petitioner, Thomas M. Riggins, respectfully represents:

That he is a citizen of the State of Alabama, and of the United States, residing in the city of Huntsville, in said State of Alabama; that he is restrained of his liberty by Daniel N. Cooper, United States marshal for the northern district of Alabama, and is now imprisoned and in custody of said marshal, under a writ of capias, issued on the 26th day of October, 1904, by the clerk of the circuit court of the United States for the northern division of the northern district of Alabama. A copy of said writ is hereto attached, marked Exhibit "A," and prayed to be taken as a part of this petition.

The said writ of capias was so issued by said clerk for the arrest and apprehension of your petitioner by reason of a certain indictment being filed in said court, preferred by the grand jury of said court at the October term, 1904, wherein your petitioner and one Robert Powell are charged with a conspiracy, combination or confederation with the intent to injure, oppress, threaten and intimidate one Horace Maples, a citizen of the United States in the enjoyment of the rights, privileges and immunities secured to him under the laws of the United States. A copy of said indictment for more particularity of averment and for minute specifications of the charges so made against him by said grand jury is herewith filed, marked Exhibit "B," and prayed to be taken — a part of this petition, as if the same were set forth at length herein.

Petitioner avers that he is restrained of his liberty, by said marshal, by reason of said capias, so issued under said indictment, and that he is held in custody by reason thereof, and for no other cause and on account of no other writ, charge or indictment.

Petitioner avers that his said imprisonment and the restraint of his liberty by said Daniel N. Cooper as United States marshal
4 is illegal and without warrant of law, in this, that said indictment and no count thereof prefers a charge against petitioner, valid under the Constitution and laws of the United States.

Petitioner further shows that the said indictment and no count thereof charges any offence or crime of which this court has jurisdiction, or which is punishable under the laws of the United States,

Petitioner avers that said indictment, charging him, together with one Robert Powell, and others to the grand jury unknown, with entering into a conspiracy or combination to injure, threaten and oppress one Horace Maples, a citizen of the United States, of

African descent and color, in denying to him, said Horace Maples, a trial by jury upon an indictment pending in the courts of Alabama for murder, by hanging him, the said Horace Maples, charges no offence violative of any right, privilege or immunity secured to said Horace Maples under the Constitution of the United States, punishable under any statute passed in pursuance thereof.

Petitioner, avers that said indictment, charging him, together with one Robert Powell, and others to the grand jury unknown with entering into a conspiracy, combination or confederation to injure, threaten and oppress one Horace Maples, a citizen of the United States, of African descent and color, in denying to him said Horace Maples, by reason of his race, a trial by jury upon an indictment pending in the courts of Alabama, against him for murder, whereby his guilt or innocence might be determined, charges no offence against petitioner, violative of any right, privilege or immunity secured to him, the said Horace Maples, under the Constitution of the United States, punishable under any statute passed in pursuance thereof.

Petitioner further avers, that it does not appear from said indictment that the conspiracy, combination or confederation therein alleged was formed and entered into, through any law of the State of Alabama, thereby authorizing said alleged conspiracy, combination or confederation, or that any law of said State of Alabama, authorized its citizens or other persons, to enter into a conspiracy, to injure, threaten or oppress the said Horace Maples, a citizen of the United States, of African descent or color or other person of African descent, or color, by denying to him said Horace Maples, a person of African descent, by reason of his race, the right, privilege and immunity of a trial by jury to determine his guilt or innocence, upon an indictment for murder, pending against him in the courts of Alabama.

Petitioner avers, further, that it appears from said indictment that said alleged conspiracy was formed and entered into, by petitioner, and others, to take from the county jail, the said Horace Maples, who was then therein confined, under the custody and protection of the sheriff, aided by the Alabama national guard, the said sheriff and other State officers and said Alabama national guard, acting under the laws of the State of Alabama, designed for the protection of persons charged with crime against the laws of the State of Alabama.

Wherefore, petitioner prays that a writ of *habeas corpus* be granted unto your petitioner, directed to said Daniel N. Cooper, as such United States marshal, commanding him to bring before this honorable court the body of your petitioner with the cause of his detention; that on the hearing of this petition that it may be adjudged that the charges contained in said indictment are invalid and wiyhout warrant in law, and that your petitioner be discharged from the custody of said marshal and from further prosecution in this behalf.

And he will ever pray.

T. M. RIGGINS.

Sworn to and subscribed before me, this 26th day of October, 1904.
[Seal of U. S. Circuit Court.]

CHAS. J. ALLISON,
Clerk U. S. Circuit Court.

Filed in clerk's office, Octo. 26, 1904.
CHAS. J. ALLISON, Clerk.

6 EXHIBIT "A."

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

The President of the United States of America to the marshal for the northern district of Alabama, Greeting:

You are hereby commanded that you take the body of Thomas Riggins, if he shall be found in your district, and him safely keep, so that you may have his body before the circuit court of the United States of America, for the northern division of the northern district of Alabama, to be held at Huntsville, in said district, at the present term, or on the first day of next term, to answer unto indictment for violation of section 5508 and 5509, of the Revised Statutes of the United States, and have you then and there this writ.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, this 26th day of October, 1904.

Issued 26th day of October, 1904.

{ Seal United States Circuit Court, Northern District of Alabama, Northern Division. }

CHAS. J. ALLISON,
Clerk Circuit Court, Nor. Dist. Ala.

7 EXHIBIT "B."

In the District Court of the United States for the Northern Division of the Northern District of Alabama, October Term, 1904.

The grand jurors of the United States, elected, impanelled, sworn and charged to inquire for the body of the said northern division of the northern district of Alabama, upon their oaths present:—

That, heretofore, on to-wit: the 7th day of September, in the year of our Lord, one thousand nine hundred and four, in the said northern division of the northern district of Alabama, in the county of Madison, and State of Alabama, within the jurisdiction of this court, and before the finding of this indictment, Robert Powell, and Thomas Riggins, whose Christian names are to the said grand jurors otherwise unknown, did conspire, combine and confederate together,

and with divers other persons to the said grand jurors unknown, to injure, threaten, oppress and intimidate one Horace Maples, a citizen of the United States in the enjoyment of a right, privilege and immunity secured to him by the Constitution and laws of the United States, to-wit, the right, privilege and immunity of him the said Horace Maples, a citizen of the United States as aforesaid, when accused of crime against the laws of the State of Alabama, to have a trial by due process of law and to be held harmless and acquitted if innocent, and to be punished if guilty, only after trial in the courts of the said State of Alabama, according to its laws; and the grand jurors aforesaid do further present: that the said persons above named, Robert Powell and Thomas Riggins, and divers other persons to said grand jurors unknown, as aforesaid, with whom they confederated, combined and conspired as aforesaid, well knew, as was the fact, that at the time they so conspired, combined and confederated as aforesaid, that the said Horace Maples was then in the lawful custody of the officers of the State of Alabama, to answer the charge of murder under the laws of the State of Alabama, and that the sheriff of Madison county, Alabama, and a detachment of the Alabama national guard which he had summoned to his assistance, were endeavoring to safely keep the said Hor-
8 ace Maples, a citizen of the United States as aforesaid, that he might enjoy the right, privilege and immunity secured to him by and under the constitution and laws of said State, to be tried by due process of law and acquitted, if innocent, or punished according to law, if found guilty, in the courts of the State of Alabama, and to that end the said sheriff and said detachment of said guard were endeavoring to prevent a mob from taking said Maples from the jail of said Madison county, Alabama, where he should be lawfully confined, and where the sheriff had confined him, and to prevent said mob from hanging him to prevent him, the said Maples' enjoyment of the said right, privilege and immunity secured to him under the constitution and laws of the State of Alabama; and that in the furtherance of the said conspiracy so formed for the purpose aforesaid, and to effect the object thereof, the said Robert Powell and Thomas Riggins, did, on to-wit: the 7th day of September, 1904, in the northern division of the northern district of Alabama, aforesaid, go upon the highway and streets of the city of Huntsville, in the county of Madison aforesaid, and did then and there unlawfully, feloniously, wilfully, premeditatedly and with malice aforethought, kill and murder the said Horace Maples by hanging him by the neck until he was dead, or by some other means to the said grand jurors unknown, and that the said unlawful killing, with malice aforethought was done in order that the said Horace Maples might be deprived of the right, privilege and immunity secured to him under the constitution of the State of Alabama, to be tried by due process of law, and acquitted, if innocent, and punished if found guilty, in the courts of the State of Alabama, in accordance with, and in the manner prescribed by the laws of

the said State of Alabama, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

Second Count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time and place aforesaid, and within the jurisdiction aforesaid, in the said county of Madison, and State of Alabama, the said Robert Powell and Thomas Riggins, whose Christian names are to the said grand jurors otherwise unknown, did conspire, and confederate together and with divers other persons to the said grand jurors unknown, to injure, threaten, oppress and intimidate one Horace Maples, a citizen of the United States, of African descent and of color, in the enjoyment of a right privilege and immunity secured to him by the Constitution and laws of the United States, to-wit: the right, privilege and immunity, of him, the said Horace Maples, a citizen of the United States, of African descent and color, when accused of crime against the laws of the State of Alabama, to have a trial by due process of law as provided in said State, and to be held harmless, if innocent and to be punished if guilty, only after trial in the courts of the State of Alabama, according to its laws; and the grand jurors aforesaid, upon their oaths aforesaid, do further present, that the said Robert Powell, and Thomas Riggins, and the said other persons to said grand jurors unknown, with whom they confederated, combined and conspired as aforesaid, well knew at the time they so conspired, combined, and confederated as aforesaid, that the said Horace Maples was then in the lawful custody of the officers of the said State of Alabama, to answer the charge of murder under the laws of the said State of Alabama, and that the sheriff of said Madison county, Alabama, and a detachment of the Alabama national guard, a body of militia created and organized by the laws of the State of Alabama, which he had summoned to his assistance, were endeavoring to safely keep the said Horace Maples a citizen of the United States, and of African descent and of color, as aforesaid that he might enjoy the right, privilege and immunity secured to him under the constitution and laws of the said State, to be tried by due process of law, which trial by due process of law, it was the duty of the State of Alabama, and its officers, under the Constitution and laws of the United States, to afford and secure the said Horace Maples, a citizen of the United States, and of African descent and of color as aforesaid, and acquitted if innocent, or punished according to law if found guilty, in the courts of the State of Alabama, and to that end were endeavoring to prevent a mob composed of white persons from taking the said Maples from the jail of Madison county, Alabama, where the sheriff had confined him, and where the said Maples was lawfully entitled to be confined and to be kept safely to await his trial by due process of law, and where the said Maples was so lawfully confined by the sheriff of said Madison county Alabama,

and to prevent the said mob from hanging him, the said Maples, to prevent his enjoyment of the right, privilege and immunity so secured to him under the Constitution and laws of the United States, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

Third Count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that upon to-wit, the 7th day of September, in the year of our Lord one thousand nine hundred and four, in the county of Madison, and State of Alabama, and within the jurisdiction of this court, one Horace Maples, a citizen of the United States, and a person of African descent and of color, was accused of a crime against the State of Alabama, to-wit: the crime of murder, and was then lawfully in the custody of the sheriff, an officer of the State of Alabama, and confined in the jail at Huntsville, Alabama, in the county and State aforesaid, to be safely kept to answer for said crime, according to law, in the courts of the State of Alabama; and the grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time and place aforesaid, and within the jurisdiction aforesaid, Robert Powell and Thomas Riggins, all of whom are white men, and whose Christian names are to the grand jurors otherwise unknown, well knowing that the said Horace Maples, a citizen of the United States and a person of African descent, and of color, was then and there in the lawful custody of Madison county, Alabama, and confined in the jail of Madison county, to answer for his crime according to law, did conspire, combine and confederate together and with divers other persons to the grand jurors unknown to have said Horace Maples taken from the said jail, and the custody of the said sheriff by lawless white persons and hung, on account of his race, and with the intent because of his race to prevent his
11 enjoyment of civil equality before the law with the white race as to a trial and right of trial by due process of law in the courts of the State of Alabama, as is enjoyed by white men under the laws of the State of Alabama, when accused of crime against its laws, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

Fourth Count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: that at the time and place and within the jurisdiction aforesaid, in the county of Madison, and State of Alabama, the said Robert Powell and Thomas Riggins, whose Christian names are to the said grand jurors otherwise unknown, and divers other persons to the said grand jurors unknown, did conspire, combine and confederate together, to injure, oppress, threaten and intimidate one Horace Maples, a citizen of the United States, in the free and

full enjoyment of the right, privilege and immunity secured to him by the Constitution and laws of the United States, to-wit, the right, privilege and immunity to have the State of Alabama, acting by and through its officers, to afford him, the said Horace Maples, a citizen of the United States as aforesaid, a trial by due process of law upon accusation of crime preferred against him, when he, the said Horace Maples, was, as was then the fact, in the custody of the officers of the law of the State of Alabama, upon the charge of murder under the laws of said State, and was then and there being held by the officers of the said State of Alabama, in the county jail of the county of Madison and State of Alabama, for the purpose of affording him such trial, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

Fifth Count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: that at the time and place, and within the jurisdiction aforesaid, in the said county of Madison, and State of Alabama, the said Robert Powell and Thomas Riggins, whose Christian names are to the said grand jurors otherwise unknown,
12 and with divers other persons to the said grand jurors unknown, did conspire, combine and confederate together, and with such other persons to the said grand jurors unknown to injure, oppress, threaten and intimidate one Horace Maples, a citizen of the United States and a person of African descent and of color, in the free and full enjoyment and exercise of a right, privilege and immunity secured to him by the Constitution and laws of the United States, on account of his race and color, to-wit: the right to the full and equal benefit of the laws of the State of Alabama, for the security of his person as is enjoyed and exercised by the white citizens thereof, and the right not to be deprived of his life without due process of law, on account of his being a citizen of African descent and of color, in this, to-wit: that he should be entitled to have, and should have a trial of any accusation, charge of crime, or indictment against him, and a determination and finding and judgment thereon of his guilt or innocence, by a court of competent jurisdiction, and by the verdict of a jury of his peers, which said right was accorded to every white citizen of the State of Alabama, and to the said Horace Maples, a citizen thereof, of African descent, and of color, by the laws of the said State of Alabama; and that the said Robert Powell and Thomas Riggins, and said other persons to said grand jurors unknown, did form said conspiracy and combination hereinbefore set forth and charged, for the purpose of injuring, oppressing, threatening and intimidating the said Horace Maples, who was then and there a citizen of the United States, in the free exercise and enjoyment of the right and privilege as aforesaid, and because and on account of his being a citizen of the United States of African descent, and on account of his color; and in the furtherance of the said con-

spiracy, so formed for the purpose aforesaid, and on account of the said Horace Maples being a citizen of the United States of African descent, and of color, and to effect the object of said conspiracy said Robert Powell and Thomas Riggins, and such other persons to the grand jurors unknown, did, on, to-wit: the 7th day of September, 1904, in the county of Madison, and State of Alabama, in the division of the district aforesaid and within the jurisdiction of said court, go upon the highway and streets of the city of Huntsville, in the county of
13 Madison aforesaid, and did then and there unlawfully, feloniously, wilfully, premeditatedly and with malice aforethought, kill and murder the said Horace Maples by hanging him by the neck, which said murder and killing was done on account of the said Horace Maples being a citizen of the United States of African descent and of color, and that the said unlawful killing of the said Horace Maples, with malice aforethought, as aforesaid, was done in order that he, the said Horace Maples, might be deprived of the full and equal benefit of the laws of the State of Alabama, for the security of his life and person, and of the full and equal benefit of the said laws not to be deprived of his said life without due process of law, on account of his being a citizen of African descent and of color, and that said unlawful killing as aforesaid, was done and committed to deprive the said Horace Maples of his right not to be deprived of his life without due process of law, which said process of law should consist of a trial of any accusation, charge of crime or indictment against him, and a determination, finding and judgment of his guilt or innocence thereof by a court of competent jurisdiction, and by the verdict of a jury of his peers, and such unlawful killing and murder as aforesaid of the said Horace Maples, was done because he, the said Horace Maples was a citizen of the United States of African descent and of color, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

Sixth Count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time and place, and within the jurisdiction aforesaid, in the county of Madison, and State of Alabama, the said Robert Powell and Thomas Riggins, whose Christian names are to the said grand jurors otherwise unknown, and divers other persons to the said grand jurors unknown, did conspire, combine, and confederate together, and with such divers other persons to said grand jurors unknown, by force and violence to injure, oppress, threaten and intimidate one Horace Maples, who was then and there a citizen of the United States and a person of African descent and of color, in the free and full enjoyment and exercise of a right, privilege and immunity secured to him by the Consti-
14 tution and laws of the United States on account of his race and color, to-wit, the right to the full and equal benefit of the

laws of the State of Alabama, for the security of his person and life to the same extent as is enjoyed by the white citizens thereof, and the right not to be deprived of his life without due process of law, on account of his race and color, in this, to-wit: that he should have and be entitled to have a trial of and upon any accusation, charge of crime, or indictment against him, and a determination, finding and judgment of his guilt or innocence of the crime so charged against him, by a court of competent jurisdiction, and by the verdict of a jury of his peers, which said right was accorded by law to every white citizen of the State of Alabama, and to said Horace Maples, a citizen thereof, and of the United States, of African descent and of color, by the laws of the State of Alabama; and that the said Robert Powell and Thomas Riggins, and said other persons to said grand jurors unknown, did form said conspiracy and combination heretofore set forth and charged for the purpose of injuring, threatening oppressing and intimidating the said Horace Maples, who was then and there a citizen of the United States, in the free exercise and enjoyment of and to deprive him of, the right and privilege as aforesaid, and to deprive the said Horace Maples who was then and there confined in the county jail of Madison county, and State of Alabama, upon a charge of murder in the unlawful killing with malice aforethought, of one E. D. Waldrop, a white man, of due process of law in this, the said Maples having the said charge against him heard, tried and determined by a court of the State of Alabama, of competent jurisdiction, and by the verdict of a jury of his peers, because, and on account of the said Horace Maples being a citizen of the United States, of African descent and of color; and in furtherance of the said conspiracy and on account of his being charged with the killing of a white man, the said Robert Powell and Thomas Riggins and such other persons to the said grand jurors otherwise unknown, did, on to-wit, the 7th day of September 1904, in the county of Madison, and State of Alabama, in the division of the district aforesaid, and within the jurisdiction of this court go upon the highway and streets of the city of Huntsville, in the county of Madison, aforesaid, and did then and there unlawfully, feloniously, wilfully, premeditatedly and with malice aforethought kill and murder the said Horace Maples by hanging him by the neck, or by some other means to the said grand jurors unknown, on account of the said Horace Maples being a citizen of the United States, of African descent and of color, and that the said unlawful killing with malice aforethough as aforesaid, was done in order that the said Horace Maples might be denied the full and equal benefit of the laws of the State of Alabama, for the security of his life and person and the right not to be deprived of his life without due process of law, on assount of his being a citizen of the United States of African descent and of color, and said killing was done for the purpose of depriving said Horace Maples of his right to be protected and not to be deprived of his life without due process of law, which said due process of law should consist of a trial of any accusa-

tion, charge of crime or indictment against him, and of a termination finding and judgment of his guilt or innocence thereof by a court of competent jurisdiction, and by the verdict of a jury of his peers, and the said killing was done and the said Horace Maples was deprived of his life without due process of law by the parties above named so conspiring and combining as aforesaid, because the said Horace Maples was a citizen of the United States of African descent and of color, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

THOS. R. ROULHAC,
United States Attorney.

A true bill.
SAMUEL M. THOMPSON,
Foreman of the Grand Jury.

Endorsed: Filed in open court, October 24th, 1904, Chas. J. Allison, clerk United States courts.

16 UNITED STATES OF AMERICA,
Northern District of Alabama, Northern Division.

I, Charles J. Allison, clerk of the circuit court of the United States of America in and for said division of said district, do hereby certify that the foregoing is a true, full, and complete copy of the indictment filed in the case of The United States *vs.* Robert Powell and Thomas Riggins, made Exhibit "B" to the petition of Thomas Riggins, as fully as the same does appear of record and from the file in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court, at office in the city of Huntsville, in said district, this twenty-eighth day of October, 1904.

{Seal United States Circuit Court, Northern Division, Northern District of Alabama.}

CHAS. J. ALLISON,
Clerk of the U. S. Circuit Court.

17 In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

THE UNITED STATES *vs.* THOMAS RIGGINS. } Order for Marshal to Bring Defendant into Court.

This day comes Thomas Riggins into open court, and files his sworn petition setting forth that he is detained by the marshal of this court by virtue of a capias issued from this court, upon

an indictment pending therein, which is set forth in said petition, and thereupon prays for a writ of *habeas corpus*.

On consideration thereof by the court, it is ordered that the marshal have the body of said Thomas Riggins before this court on Wednesday, the 26th day of October, 1904, at four o'clock, p. m., then and there to do and receive what shall be considered by the court in the premises and he is further directed to certify to the court the true cause of the detention of said Riggins.

This October 26, 1904.

THOS. G. JONES, Judge.

Filed in open court, October 26, 1904.
CHAS. J. ALLISON, Clerk.

18 In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

THE UNITED STATES
vs.
THOMAS M. RIGGINS. } Writ of *Habeas Corpus*.

To D. N. Cooper, United States marshal:

Whereas, an order of court has been entered herein:—viz:—

"This day comes Thomas M. Riggins into open court, and files his sworn petition setting forth that he is detained by the marshal of this court by virtue of a capias issued from this court upon an indictment pending therein, which is set forth in said petition, and thereupon prays for a writ of *habeas corpus*.

Upon consideration thereof by the court, it is ordered that the marshal have the body of said Thomas M. Riggins before this court on Wednesday, the 26th day of October, 1904, at four o'clock p. m., then and there to do and receive what shall be considered by the court in the premises, and he is further directed to certify to the court the true cause of the detention of the said Riggins."

You are therefore hereby commanded to have the body of Thomas M. Riggins alleged to be detained by you, by whatever name the said Thomas M. Riggins is called or charged with the cause of such detention before our said circuit court on Wednesday, the 26th day of October, 1904, at four o'clock p. m., to do and receive what shall then and there be considered concerning the said Thomas M. Riggins.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this the 26th day of October, 1904.

{ Seal United States Circuit Court, Northern District of Alabama, Northern Division. }

CHAS. J. ALLISON,
Clerk U. S. Circuit Court.

Returned and filed, Octo. 26, 1904.
CHAS. J. ALLISON, Clerk.

19 In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

THE UNITED STATES OF AMERICA
vs.
THOMAS RIGGINS and ROBERT Powell.
} Answer to Writ of *Habeas Corpus*.

In this cause comes Daniel N. Cooper, and for return to the writ of *habeas corpus* this day served upon him says:—

That he produces herewith and brings into court the body of the said Thomas Riggins, and hereby certifies that he holds and detains him the said Thomas Riggins under a capias issued from and by the circuit court of the United States for the northern division of the northern district of Alabama, under an indictment pending in said court; which said capias and indictment are correctly set forth in the petition filed by the said Thomas Riggins for the aforesaid writ of *habeas corpus*. Done and certified, this 26th day of October, 1904.

D. N. COOPER,
U. S. Marshal for Northern Dist. Alabama,
By W. A. GREENE,
Dep. U. S. Marshal.

Filed in open court Octo. 26, 1904.
CHAS. J. ALLISON, Clerk.

20 In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

UNITED STATES
vs.
THOMAS M. RIGGINS.
} Order Denying Petition for *Habeas Corpus*.

This day came Thomas M. Riggins in open court, and presented his petition for a writ of *habeas corpus*, alleging that he is restrained of his liberty contrary to the Constitution and laws of the United States as more fully shown by his petition filed herein.

And thereupon, the court issued a writ as prayed for in said petition and thereafter and thereupon the marshal of said district produced the body of said Thomas M. Riggins in open court and made the return to the said writ, as set forth in the record of this cause.

Upon consideration, it is ordered, adjudged and decreed, by the court that the prayer of the petitioner be denied, and that the writ of *habeas corpus* be discharged and denied, and that petitioner be remanded to the custody of the United States marshal to be held under said indictment and capias until discharged by due process of law.

Thereupon the said Thomas M. Riggins in open court, filed his petition for an appeal from said order to the present term of the Supreme Court of the United States, which appeal was in open court, duly allowed. The district attorney of the United States for said district then and there being present representing the United States.

It is further ordered that the said defendant, Thomas M. Riggins, execute an appeal bond in the penal sum of two hundred and fifty dollars, payable and conditioned as by law provided, which said bond is now tendered in open court, and the same is now duly approved.

Done this 26th day of October, 1904.

THOS. G. JONES,
Judge Presiding.

Filed in open court, Oct. 26, 1904.
CHAS. J. ALLISON, Clerk.

21 In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

THE UNITED STATES OF AMERICA
vs.
THOMAS RIGGINS and ROBERT POWELL. } Bill of Exceptions.

Be it remembered, that on this the 26th day of October, 1904, a day of the regular term of the said court, Thomas Riggins filed his petition for a writ of *habeas corpus* as appears from the record herein, and thereupon the marshal produced the body of said Riggins in open court as commanded by the writ issued in this cause, and made the return certified by him as appears from the record in this cause, and thereupon, petitioner offered in evidence the capias and indictment, the return of the marshal to the writ of *habeas corpus*, no other evidence being offered, the petitioner in open court moves the court to discharge the petitioner from custody or restraint under the said capias and indictment, on the ground that the indictment charges no offence against the laws of the United States, and also that this court had no jurisdiction under the Constitution and laws of the United States, of the alleged offence set forth in said indictment, or in any of the counts thereof: and thereupon, after argument, the court being of opinion that the indictment is valid and charges offences against the laws of the United States, which this court has jurisdiction to hear and determine, denied said motion, and remanded the prisoner to the custody of the marshal, and discharged the said writ, and to these orders the petitioner separately and duly excepted in open court.

Wherefore petitioner tenders this as his bill of exceptions which he prays may be signed and sealed as such, and made a part of the

record in this cause, which is accordingly done and allowed by the presiding judge of this court, in open court, this 26th day of October, 1904.

THOS. G. JONES,
U. S. Judge, Northern District of Alabama, Presiding in and over the Circuit Court of the U. S. for the Northern District at its Present Session.

Filed in open court, Octo. 26, 1904.
CHAS. J. ALLISON, Clerk.

22 In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

UNITED STATES
vs.
THOMAS M. RIGGINS. } Appeal Bond.

Know all men by these presents: That we, Thomas M. Riggins, J. P. Powell and F. S. Bennett, of the county of Madison, State of Alabama, are held and firmly bound unto the United States of America, in thr sum of two hundred and fifty dollars, to be paid the *the* said United States of America, for the payment — well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally firmly by these presents.

Sealed with our seals, and dated this 26th day of October, 1904.

Whereas, the above named Thomas M. Riggins has prosecuted an appeal to the present term of the Supreme Court of the United States to reverse the order rendered in the above entitled cause on the 26th day of October, 1904, by the circuit court of the United States for the northern division of the northern district of Alabama;

Now therefore, the condition of this obligation is such that if the above named Thomas M. Riggins shall prosecute said appeal to effect, and answer all damages and costs, and if he fail to make said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

T. M. RIGGINS. [SEAL.]
J. P. POWELL. [SEAL.]
F. S. BENNETT. [SEAL.]

Sealed and delivered, and taken and acknowledged, this 26th day of October, 1904.

Approved this 26th day of Octo. 1904.

THOS. G. JONES,
U. S. Dist. Judge, Presiding in and Holding Circuit Court.

Filed in open court, Octo. 26, 1904.
CHAS. J. ALLISON, Clerk.

23 In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

UNITED STATES
vs.
THOMAS M. RIGGINS. } Petition for Appeal.

To the honorable the judge of said court:

Your petitioner, Thomas M. Riggins, conceiving himself aggrieved by the order entered in this court on the 26th day of October, 1904, denying petitioner the writ of *habeas corpus* filed by him in this cause, doth hereby appeal from said order, to the Supreme Court of the United States, and he prays that this his appeal may be allowed, and he hereby presents assignments of error in said cause; and that a transcript of the record and proceedings herein by which said order was made, duly authenticated, may be sent to the Supreme Court of the United States at the present term thereof as by the rules of said court in such cases made and provided.

T. M. RIGGINS.

Filed in clerk's office, Octo. 26, 1904.
CHAS. J. ALLISON, Clerk.

24 In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

UNITED STATES
vs.
THOMAS M. RIGGINS. } Assignments of Error.

The defendant petitioner, Thomas M. Riggins, in connection with his petition for an appeal, makes the following assignments of error in the ruling of this court,

1. The court erred in refusing to grant the prayer of said petition.
2. The court erred in refusing to discharge the petitioner, and in remanding him to the custody of the marshal.
3. The court erred in not determining as a matter of law that the indictment,—a certified copy of which is annexed to the petition,—charged no offence punishable under the laws of the United States.
4. The court erred in determining that the said indictment, charging this defendant with a conspiracy or combination to injure, threaten and oppress one Horace Maples, a citizen of the United States, of African descent and color, in denying the said Horace Maples a trial by jury, charges an offence, which is punishable under the laws of the United States.
5. The court erred in refusing to hold that the said indictment charging this defendant with a conspiracy to injure, threaten and

oppress Horace Maples, a citizen of the United States, of African descent and color, in denying him a trial by jury, upon an indictment for murder in the courts of Alabama, by hanging him, did not charge any offence cognizable by the courts of the United States, or punishable under the laws of the United States.

6. The court erred in holding that said indictment charging this defendant, together with one Robert Powell and others, with entering into a conspiracy to injure, threaten or oppress Horace Maples, a citizen of the United States, of African descent and color, in denying to the said Horace Maples, by reason of his race, a trial by jury, upon an indictment in the courts of Alabama, under an indictment for murder, whereby his guilt or innocence might be determined, constituted an offence within the jurisdiction of the courts of the United States, or punishable under the laws of the United States.

7. The court erred in holding that the facts set forth in said indictment, charged an offence within the jurisdiction of the courts of the United States, and punishable under the laws of the United States.

8. The court erred in refusing to hold that the facts set forth in said indictment, and in each count thereof, charged an offence punishable only in the courts of the State of Alabama.

COOPER & FOSTER,
Attorneys for Defendant.

Filed in clerk's office, Octo. 26, 1904.
CHAS. J. ALLISON, Clerk.

THE UNITED STATES
vs.
THOMAS M. RIGGINS. } Opinion. *Ex Parte* Riggins.

JONES, District Judge:

Whether or not Maples, a negro citizen, had the right, privilege or immunity under the Constitution and laws of the United States to be free from lawless violence at the hands of white men, intended on account of his race to prevent his enjoyment of civil equality before the law, "as is enjoyed by white citizens," depends upon the proper construction of the XIIIth amendment and valid legislation under it.

In the Civil Rights cases, 109 U.S. 20 —, the Supreme Court said that the XIIIth amendment "is undoubtedly self-executing, and by its own unaided force and effect abolished slavery and established universal freedom." It was further said, that "it authorized legislation for the protection of the freedom it intended to secure, which might be direct and primary in its nature, operating upon the acts of individuals, whether sanctioned by legislation or not. In *Ex parte* Virginia, 100 U. S., 304, speaking of the XIIIth amendment, as well as of the

XIVth and XVth amendments, the court said, "One great purpose of these amendments was to raise the colored race from that condition of inferiority and servitude in which most of them had previously stood, into perfect equality of civil rights with all other persons within the jurisdiction of the State." It is further said of the XIIIth amendment, as well as the others, in the Slaughter House cases, 16 Wallace, 71: "One pervading purpose found in them all, and lying at the foundation of each, and without which none of them would have been even suggested, was the freedom of the slave race, and the security and firm establishment of that freedom, and protection of the rights of the newly made freeman and citizen from the oppression of those who had previously exercised unlimited dominion over them." The condition of affairs existing in some of the States shortly after the adoption of the amendment, as stated in the Slaughter House cases, 16 Wallace, 7, resulted in the passage of an act on April 9, 1866, commonly known as the civil rights bill, entitled "An act to protect all persons in their civil rights and
27 furnish the means of their vindication." The first section, codified as section 1977 of the Revised Statutes, was readopted in substance after the adoption of the XIVth amendment. That section provides that "all persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, penalties, licenses, taxes and to exactions of every kind, and to no other." If the XIIIth amendment, as the Supreme Court declares, "by its own unaided force abolished slavery and established freedom" and Congress was expressly vested with power to enforce it, it is impossible, in the light of its known history and purpose and the decisions cited above, to doubt that Congress had authority to pass the first section of that act. Mr. Justice Swayne, in United States, *v.* Rhodes, 1 Abbott, 28, held that the "emancipation of one who was a native born slave, by removing the disability of slavery, made him a citizen without any further act of Congress." Mr. Justice Bradley, in United States *v.* Cruikshank, 1 Woods' Rep., 308, said, "As the disability to be a citizen and enjoy equal rights were deemed one form or badge of servitude, it was supposed that Congress had the power under the amendment to settle this point of doubt, and place the other race on the same plane of privilege as that occupied by the white race. Conceding this to be true, which I think it is, Congress then had the right to go further, and to enforce its declaration by passing laws for the prosecution and punishment of those who should deprive or attempt to deprive any person of the rights thus conferred upon him. Without having this power, Congress could not enforce the amendment. It cannot be doubted, therefore, that Congress had the power to make it a penal offense to conspire to deprive a person, or to hinder him in the exercise and enjoyment of rights and privileges con-

ferred by the XIIIth amendment, and the laws thus passed in pursuance thereof.

To constitute the offense, therefore, of which courts of the United States have the right to take cognizance under the amendment, there must be the design to injure a person or deprive him of
28 the equal right of enjoying the protection of the laws, by reason of his race, color, previous condition of servitude." The views of Mr. Justice Bradley and Mr. Justice Swayne in the cases cited, as to the power of Congress to protect the freedom given by the amendment and of what it consisted, were approved by the Supreme Court of the United States in Harris v. The United States, 106 U. S., 629. See also what is said of Cruikshank's case in this regard in Logan v. United States, 144 U. S., 288. The character of the freedom intended to be conferred and enjoyed was symbolized, in the minds of the framers of the constitutional amendment, and the legislation intended to accomplish its purpose, by the civil rights enjoyed by the dominant race; or to quote the language of that section, "as is enjoyed by white citizens." This civil equality must not be confounded with social or political rights. As this was the standard of the freedom conferred and the measure of the rights which constituted that freedom, and as the purpose of the legislation, under the amendment, was to secure and protect the former slave race from the aggressions of the master race, it is quite clear that the right to be free from attacks by members of one race, designed and intended to prevent the other race from enjoying the civil rights which go to make up that freedom, is a right, privilege or immunity "accorded by, or arising under, or dependent upon the Constitution" and that such rights may be protected by Congress—Cruikshank v. United States, 1 Woods' Reports, 303; United States v. Rhodes, 1 Abbott, 28; Civil Rights cases, 109 U. S., 23; United States v. Morris, 125 Fed. Rep. 322.

Whatever may be said of any other murder of a negro by white men, it is undeniable when a negro is taken by white men from the custody of the State authorities, when he is being held for trial on accusation of crime against State laws, and put to death to prevent his having such trial, because of race hostility, that the manifest result, as well as intent of such act, is to deprive him, because of his race, of the enjoyment of the civil rights accorded by law to white freeman. Such an act, perpetrated in that manner, and with that intent, because of race malevolence, assails the negroe's civil equality because of his race, and by denying the enjoyment of
29 that right with that motive, attacks the enjoyment of the freedom, the civil equality, which the amendment and legislation under it secures to him.

II. It is said of the counts based upon violation of rights or privileges claimed under the XIV amendment, that no complaint is made of the laws of the State, or of, the modes of enforcing them, but that, on the contrary, it is shown the State was without fault, and that its

civil and military power was overwhelmed, while the State was endeavoring to protect Maples from the mob, in order to afford him a trial by due process of law; and this being so, it is insisted that a case is presented in which the United States has no power to legislate for the punishment of the offenders in any aspect in which the matter may be viewed. The fact that the State was without fault and endeavoring to do its duty, is not, however, at all conclusive of power of Congress to legislate under that amendment, and is material only in determining the channels in which that power may be exercised.

The duty of affording due process of law to all persons was an original duty of the State, and prior to the XIVth amendment was not a matter of concern to the General Government. That amendment made the performance of the duty by the State a matter of national concern; and if need be of national supervision. It was not the intention of the States in adopting this amendment to confer power upon the General Government to undertake the general or initial duty of affording due process of law. The purpose was that the State should continue to administer justice, and punish crime, but subject to the authority conferred by the XIVth amendment upon Congress. When, therefore, the amendment contemplates that the State should continue to discharge the duty, and forbade the States in the performance of it to deny due process, the prohibition *ipso facto*, inevitably, became nothing more or less than a positive command that the States shall afford due process to all persons, and certainly to all citizens. It resulted from the judicial power of the United States that the Supreme Court became the final arbiter of what constituted due process of law, and the equal protection of the law; yet, the main purpose of the amendment was to increase the power of Congress. It is Congress to which is given the power "to enforce" the duty by appropriate legislation. *Ex parte* Virginia, 100 U. S. S., 345. The Supreme Court has declared of these provision- that "they are to some extent declaratory of rights, and though in form prohibitions, they imply immunities such as may be protected by congressional legislation." The power of Congress under the amendment, as to the performance of the duty thus enjoined upon the State, has therefore a twofold aspect. The first concerns the right to interfere with State laws or State power. That can be done only when the State is at fault, when the State either refuses to afford due process of law, or its officers refuse to execute the laws, or execute them with vicious purpose or uneven hand. Then, and not until then, can Federal power step in and displace or alter State laws, or interfere with State officers. Then, the interference with State law or power must be confined to dealing with the particular evil and to providing an effective cure for it. The other phase of the power concerns the protection of the rights which the amendment gives, though the State may not be at fault, and also the power of Congress to aid the State, in the performance of its duty, by removing obstruction or resistance by private lawlessness, to the successful performance of the duty.

The vital purpose of the amendment in imposing the duty upon the State under this clause, is not merely to secure formal recognition of the right in the constitution and laws of the State, and provisions to enforce them, which, unless they are enforced, amount only to parchment due process of law; but, that the duty should be so performed that it will result not merely in having proper laws and officers, but in the full enjoyment of the benefits of the operation of due process of law, in individual cases. When a private individual takes a person charged with crime from the custody of the State authorities, to prevent the State from affording him due process of law, and puts him to death to punish the crime and to prevent the enjoyment of such right, it is violent usurpation and exercise, in the particular case, of the very function which the Constitution of the United States itself, under this clause, directs the State to perform in the interest of the citizen. Such
31 lawlessness differs from ordinary kidnapping and murder, in that the dominant intent and actual result is usurpation and exercise by private individuals of the sovereign functions of administering justice and punishing crime, in order to defeat the performance of duties required of the State by the supreme law of the land. The inevitable effect of such lawlessness is not merely to prevent the State from performing its duty, but to deprive the accused of all enjoyment, or opportunity of enjoyment of rights, which this clause of the Constitution intended to work out for him by the actual performance by the State of all the things included in affording due process of law, which enjoyment can be worked out in no other way, in his individual case. Such lawlessness defeats the performance of the State's duty and the opportunity of the citizen to have the benefit of it, quite as effectually and far more frequently than vicious laws, or the partiality or the inefficiency of State officers in the discharge of their constitutional duty. It is a great, notorious, and growing evil, which directly attacks the purpose which the Constitution of the United States had in view when it enjoined the duty upon the State.

Upon what principle, then, can it be said that because the State is not at fault, that the power given Congress by this amendment is thereby rendered futile, and that it can not exercise even the incidental power of removing lawless resistance to the State's performance of this duty in order to protect the right, when the exercise of the power by Congress does not displace State laws or interfere with State officers? Such legislation is certainly "appropriate" in the sense that it is adapted to carry out the purposes of the amendment, and certainly directly aids its accomplishment. If it can be criticised as not being "appropriate," it can only be in the sense that it is in excess of authority. The objection, therefore, comes to this, that Congress has no power, in any event, although it confines its legislation to removing obstacles and resistance in the pathway of the State in the discharge of its duty, which subvert the purposes of the amendment and defeat the enjoy-

ment of the rights sought to be secured by the performance of
32 the duty enjoined. If we regard the rule that "when the end is required, the means are given," Prigg, v. Pennsylvania, 16 Peters, 539; Legal Tender cases, 12 Wallace, 536; the Legal Tender case, 110 U. S., 492; the right of Congress to legislate against such acts of private individuals is plainly implied in the power given to enforce the amendment. Section 5508 of the Revised Statutes as applied to such a case can be sustained under that power; for its application deals only with acts that subvert the performance of the duty, without in any way interfering with or touching the power of the State or its laws.

If, however, such power is not implied in that amendment, it is certainly not prohibited by it, and may be exercised by Congress if it can be found in any other provision of the Constitution. It is stated by Mr. Justice Strong, in delivering the opinion of the court in the Legal Tender cases, 12 Wallace, 536, that "the existence of a power may be deduced from one or more of the substantive powers expressed or defined, or from them all combined, and that it is allowable to group any number of them, and infer from them all that the power has been conferred." It was also declared in the same case that a "power may exist as an aid to the execution of an express power, or the aggregate of such powers, though there is another express power given relating to the same subject, but less extensive." 12 Wallace, 536. The last clause of section 8, article I, empowers Congress to make all laws which shall be "necessary and proper," for carrying into execution the "foregoing powers and all other powers vested by this Constitution in the Government of the United States, or any department thereof." The Supreme Court has held that the amendment is an "additional guaranty" for the enforcement of due process of law at the hands of the State, and that the power was conferred upon Congress to see that the duty guaranteed was performed. Certainly, if the legislative power to guaranty the performance of the duty is vested in Congress by the XIVth amendment itself, Congress has power under section 8 of article I to pass all laws which shall be "necessary and proper" to carry into execution that guaranty. The legislative power to make good the guaranty, involves the power to protect State officers when
33 endeavoring to discharge the constitutional duty, and to punish private individuals who resist the execution of the laws, by whose enforcement alone the duty can be accomplished, and the rights, privileges and immunities enjoyed, which the amendment intended to bestow, when it required the performance of the duty at the hands of the State.

The principle upon which such legislation is vindicated, is illustrated and upheld in *Ex parte* Siebold, 100 U.S., 372. In that case, laws of the United States were involved which imposed penalties upon State officers for not performing their duty as commanded by State law, so far as it affected the election of Congressmen and presidential electors. The court held that the duties to be performed

were "due to the United States, as well as to the State," and that Congress could rightly make such violation of State laws an offense against the United States. It was said,—this power necessarily followed from "the direct interest" which the National Government had in the subject. The National Government having a direct interest in the performance of the duty here, can protect officers who are charged with it. The right to protect the officer in discharge of the duty, involves the power to punish private individuals who assail the officer to prevent his performing it. The General Government, certainly, has as direct and deep an interest in securing the successful performance of the duty to furnish due process of law, which is required of the State to secure the enjoyment of fundamental rights of citizens of the United States, as it has in the performance of duties by State officers under the State law, affecting the election of Congressmen and presidential electors. It has also been held in numerous cases that the function which a party is performing, determines whether Congress has the right to protect him in performing a duty enjoined or in the exercise of a right or privilege. A State officer in attempting to afford due process in a particular case is discharging a duty imposed upon him, as the representative of the State, by the Constitution of the United States, for the benefit of its citizens. The prisoner also, while confined and being protected against lawless violence, that he may have a trial according to the law of the land, is in the exercise or enjoyment of a right given him by the Constitution. Con-
34 gress may protect the performance of the duty and the rights which flow from it, by declaring that violations of State laws on the subject, constitute offenses against the United States. *Ex parte* Siebold, *supra*. Indeed, whether an act constitutes an offense against the United States, as well as the State, very frequently turns upon the intent with which it is done. United States, *v.* Cruikshank, 1 Woods' Reports, 308; United States, *v.* Waddell, 112 U. S., 80. Congress, instead of making violation of State laws which protect the right a substantive offense under the Federal law, may strike at the evil effect of private lawlessness upon the right, and punish conspiracies to prevent enjoyment of the right, and in that connection acts done to carry it out. Sections 5508 and 5509 of the Revised Statutes are framed upon this latter principle.

It is nothing new in our jurisprudence for Congress to legislate against lawless acts of private individuals, to aid and protect State officers in the performance of duties which the Constitution of the United States requires of them, although such duty is due only to the public, or Government, and not directly due to any particular individual, and although the provisions of the Constitution imposing the particular duty give Congress no power to coerce or supervise its performance. Under the Constitution, Congress is without power to compel the State to which the fugitive from justice has fled, to surrender him upon the "demand of the governor" of the State from which the accused fled. This is only a moral duty ad-

dressed to the conscience of the State; yet, when the State undertakes to obey the Constitution, and enters upon the performance of the constitutional duty, Congress steps in and punishes individuals who interfere with the agents of the State in the discharge of that duty. For more than a century, there has been a statute, now codified as section 5279 of the Revised Statutes of the United States, constitutionality of which has never been doubted, which puts a penalty upon persons who interfere with the agents of the demanding State, though, in the language of the Supreme Court, "they are the mere agents of the State, with authority to receive the fugitive from justice." Robb *v.* Connolly, 111 U. S. 634. What difference is there in principle between legislation of Congress which punishes private individuals who rescue a fugitive from justice, in the custody of the agent of the demanding State, to prevent the fugitive's return, as required by the Constitution, and legislation which punishes private persons who take a prisoner from the custody of State officers, who are holding him to give him a trial by due process of law on accusation of crime, and murder such prisoner to prevent the performance of the duty, which, under the Constitution is "due to the United States as well as to the State," and as well, also, to the citizen?

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No one can deny that the XIVth amendment conferred upon the citizen the right, privilege or immunity to have his State afford him due process of law, on accusation of crime against him, and that a right or privilege was thereby vested in the citizen under the Constitution of the United States, to have the State perform this duty.

The very words of this clause, by their own unaided force, inevitable give a command that the State shall afford due process to the citizen. It is, therefore, a right, privilege or immunity of a citizen of the United States to have the State afford him due process of law. It is an universal rule of law and common sense as well, that the grant of a right or privilege, carries with it every right or privilege necessary to the enjoyment of the right granted, unless withheld by the terms of the grant. The grant here makes no such exception. The constitutional right of the citizen cannot bear fruit, or ripen into the enjoyment of due process at the hands of the State, if lawless outsiders prevent State officers from performing their duty concerning it. The right, privilege or immunity of a citizen of the United States, under this clause, which is to have his State give him the benefit of due process of law, therefore, necessarily carries with it, and includes in it, the right, privilege or immunity to enjoy freedom, exemption, from lawless assault, which supervenes between the State and the performance of its duty, and by such violent interference prevents the citizen having, when the State is endeavoring to afford it, due process at the hands of the State.

There is no valid legislation of Congress which protects the enjoyment of this right by criminal penalties, except section 5508 of the Revised Statutes. That statute does not define the right or privilege here considered, or particularize the

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rights it is designed to protect, but is directed to the punishment of conspiracies to deprive any citizen of the enjoyment of any right or privilege "secured to him by the Constitution or laws of the United States." In considering its application to this case, we must be careful not to overlook what part of the right or privilege is involved and remains to be guarded, when the State is endeavoring to afford due process of law, and is assailed to prevent it from doing so, by private individuals. The privilege or immunity then, is the right or privilege to freedom, or exemption, from lawless attacks on the discharge of the duty by the State, which prevent the State, acting through its officers, from administering due process, and thereby frustrate the citizen's enjoyment of the protection, which the Constitution intended to effect for him, when it gave him the immunity or right to have due process of law at the hands of the State. When the State is endeavoring to do its duty, such lawlessness is the only means by which the enjoyment of the right or privilege can be breached. It is the attack upon the endeavor of the State to perform the duty, and not the crime committed under the State laws against the person of the citizen, which determines whether the enjoyment of the right has been assailed, or the State has been prevented from dispensing due process of law to the citizens in the constitutional sense. The wheels of justice must be stopped by unauthorized force after they have been put in motion, to bring the offender in a case like this, within the grasp of section 5508.

The State, in the first instance, discharges its full constitutional duty, under this clause, of affording due process to every person in the jurisdiction, by passing proper laws for the protection of rights of person and property, and giving proper means of enforcing them. After doing that, it cannot be lacking in the duty of affording due process to any person, as to any wrong to person or property, until the nature of the case calls for the further administration of
37 due process, which constitutes the second stage of the duty and in the particular case. Then, the duty of affording due process, which in its first stage involved only the exercise of legislative power, in passing laws, or of executive power, when the appointment of officers is put upon the executive, may involve the administration of judicial process in the particular case. So far as the duty of affording due process depends upon legislation, it is a general duty owed alike to everybody, and the right is given and the duty discharged, and the privilege enjoyed, so long as such laws remain in force, and are fairly executed. The second stage of affording due process, includes the obligation in many instances to administer judicial procedure in the individual case, and is due to a particular person. The State cannot be said to be prevented from performing the duty of affording due process, where it involves the necessity of administering judicial procedure, unless, after the occasion has arisen for judicial proceedings, the State has been overawed from attempting the duty, or having begun the performance of it, is subsequently compelled to abandon it. Before the State can be said to

have been prevented from discharging the duty of affording due process, where it involves the administration of judicial procedure, some proceeding must have been begun, in some tribunal, regarding the citizen or person, in which some right is asserted against him, or claimed by him, which the State, through its officers, is attempting to afford, and they must have been directly prevented by lawless resistance to their efforts from continuing the effort to administer justice in that case. Hence, when a person is murdered, although his life has been taken in violation of law, and in that sense, he has been taken off without due process, the State cannot be said thereto to have been prevented from discharging the duty of affording him due process of law, in the constitutional sense, unless such citizen was in the custody of the authorities of the State for violation of its laws, or some proceeding was being actually attempted or carried on in the courts, for the adjudication and enforcement of some right in which he was concerned, wherein the State was prevented from adjudging and enforcing the right, through judicial procedure, by direct attack made upon its officers, frustrating their endeavors to perform their duties. It is, we
38 repeat, resistance to the efforts of the State's officers to perform their duty, preventing them from doing the things which the law requires them to do, which defeats the State's discharge of the duty of rendering due process of law, and thereby assaults the enjoyment of the privilege or immunity of the citizen to have due process at the hands of the State. The right of the citizen to have the duty performed, which Congress is given power to enforce, necessarily carries with it the right to have protection against lawless acts of outsiders, which prevent the State from giving the citizen the benefit of due process of law. The right being given, and duty being put upon Congress to protect it, the duty to protect carries with it, even in the absence of special authorization, the power of protecting the enjoyment of the right, and authorize- Congress to adopt any legitimate means which is best adapted to attain the object. As said in Prigg *v.* Commonwealth, *supra*, "the fundamental principle applicable to all cases of this sort, would seem to be that when the end is required, the means are given; when the duty is enjoined, the ability to perform it is contemplated to exist in the functionary to whom it is entrusted." As the thing which the statute punishes here, is the attack upon the prisoner's right to have judicial procedure administered at the hands of the State and the resistance to the State's effort to afford the enjoyment of the citizen's privilege or immunity rights dependent upon or secured by the Constitution of the United States, there is no force whatever in the suggestion that the principle which justifies the application of section 5508 to this case, involves power in Congress to punish ordinary murder, or other mere trespass upon person or property, or invades the domain of State power in any way. United States *v.* Moore, 129 Fed., 643.

III. The precise question here was not mooted in either the civil

rights cases or in Harris *v.* United States, nor was its decision necessary to the judgment in those cases. The Harris case involved nothing under the XIVth amendment, except the inquiry whether private individuals could deprive a citizen of the enjoyment of the "equal protection of the laws" in the constitutional sense, and whether Congress had power to pass laws which constitute the
39 legal system in which consists the equal protection of the laws. The civil rights cases involved the power of Congress to secure rights claimed under the recent amendments, by general legislation, "which steps in the domain of local jurisprudence, and lays down rules for the conduct of individuals in society to each other," without reference to State laws or State action, concerning equal accommodations on carriers, at inns and places of public entertainment. It was decided that the privilege or right to such accommodation was not given or secured by the XIIIth amendment. The court declined to decide whether it was given or secured by the XIVth amendment, contenting itself with holding that the interference by the particular statute with State laws went beyond the limits of the evil to be remedied, which alone authorized Federal interference, and was, therefore, not "appropriate." It was the plenary power of Congress over State laws and State officers, when the State was not at fault, and not auxiliary power of Congress or its right to punish individuals who prevent the enjoyment of a right secured to the citizen under the Constitution and laws of the United States, which was there involved and decided. Cohens, *v.* Virginia, 6 Wheaton, 399.

IV. This opinion might well stop here; but in view of the great importance of the subject, the fullest discussion can not be out of place. It is, therefore, proper to inquire further what difference there is in the constitutional sense, between the nature and sweep of the rights, privileges or immunities flowing from the two clauses concerning "the equal protection of the laws" and "due process of law."

The equal protection clause makes but one demand upon the State and gives the citizen a single right only. It is that the State must make and execute its laws fairly and impartially. It must not grant rights to one which, under similar circumstances, it denies to another. This command is fully obeyed when the State passes impartial laws and provides proper officers to execute them, and they endeavor to do so. The constitutional command is only that the State create and enforce a legal status. When that status is created and the State's officers endeavor to maintain it, the State, under this clause,
40 has done its full duty to the citizen. The citizen is thereby put in full possession and actual enjoyment of the right the Constitution confers upon him. No act of a private citizen can defeat the enjoyment of this status, since it can be created only by the exercise of legislative power, and impaired only by acts of officers, those who wield State authority, by refusing to enforce these laws, or enforcing them with uneven hand or vicious purpose. State

power, which a private citizen does not possess, and cannot wield, alone can impair the enjoyment of the right. When the State, including therein officers who wield its power, has done its duty, the system of the State, the laws for the prevention and punishment of wrongs and enforcement and vindication of rights, in which consists the thing, which constitutes "the equal protection of the laws," is wholly and entirely the creation of the State, deriving its origin and force solely from the power of the State. The State may grant what it pleases, and withhold what it pleases, doing so impartially; for this clause neither commands the State to give any particular right or forbids it to withhold any particular right. Whatever is actually given is a gift of the State, in no wise secured by or dependent upon the Constitution of the United States. Whether these laws are obeyed or resisted, by private individuals, it amounts to nothing more than loyalty or disloyalty to State authority. The resistance to these laws by private individuals can not blot out the fact that the State has passed proper laws and appointed proper officers to execute them and thereby afforded "the equal protection of the laws,"—the status the Constitution commanded it to confer upon the citizen—and that in consequence he has full enjoyment of the right or status.

On the other hand, how is it with the right, privilege, or immunity, flowing from the right of the citizen to have the State afford him due process? Is it dependent wholly upon State laws? Can not its enjoyment be defeated, in the constitutional sense, by the act of private individuals, although neither the State laws nor officers are at fault?

The general duty of the State to afford due process of law to all persons is discharged, in the first instance, as we have seen, by the passage of proper legislation, and providing proper modes for
41 securing the enjoyment of life, liberty, property and the pursuit of happiness. This, however, is in no wise true of another phase of the duty, such as arises here, when the right to have due process at the hands of the State involves the enjoyment of the due administration of judicial procedure. When that is the case, there are many things which the State and its officers must do, or cause to be done, and in individual cases, by physical and mental work as distinguished from the exercise of legislative or political power, before the citizen can have the enjoyment at the hands of the State of due process of law. When the State seeks to punish the citizen for crime, it must not only give the person a right to appear before a lawful tribunal, but it must afford the opportunity as well Having put the accused in jail, it must keep him safely and bring him before that tribunal. When it brings him there, it must bring his witnesses there, if they will not come. In Alabama, it must confront him with a panel of his peers, from among whom he and the State elect a jury. A judge must be there to give the jury the law, and the prisoner may except and appeal, if dissatisfied with his rulings. The judge and jury must hear counsel in the prisoner's

defense. Then, the State must cause the jury to retire, where they will be guarded from outside influence, while they deliberate upon the guilt or innocence of the defendant, and then come again in court in the prisoner's presence, and return a verdict. The prisoner, if dissatisfied may poll the jury. He has the right to present whatever he can to the judge before sentence is pronounced, if found guilty, and then to have execution of the sentence suspended, until his appeal to the supreme court can be heard.

It is not clear that private individuals who overpower State officers, when they are endeavoring to protect a prisoner accused of crime, whom they have confined to the end that both he and the State may exercise their respective functions and rights before a judicial tribunal, and wrest the prisoner from their custody, and then murder him to punish him for the crime, do, in the constitutional sense, as well as in every other sense, deprive the prisoner of the enjoyment of due process at the hands of the State and prevent the State from affording it? No one can deny, that
42 under the Constitution, it is the prisoner's right to enjoy the workings of such due process, and that it is the duty of the State under the XIVth amendment to dispense such justice to him. These rights cannot be enjoyed, or the duty enjoined upon the State discharged, except from the undisturbed working of the machinery of justice after its power has once been put in motion until the period arrives in the particular case where it may rightly stop. Until it has done its perfect work, the administration of due process, which, in a case like this can not be enjoyed except by the regular and orderly working of judicial procedure, is not afforded by the State.

It can not be contended with any foundation in reason, that the right, privilege or immunity of the accused, to have due process at the hands of the State, is neither derived from or secured by the Constitution of the United States. The phrase "due process" has had a well defined meaning for ages. It has been previously employed in the Vth amendment. Putting it in the XIVth amendment not only granted, but directly defined certain specific rights, which enure to the benefit of every person, alien as well as citizen, and are "derived from, dependent upon, or secured by the Constitution of the United States." The right thus created and defined, in a case like this, involving life and liberty, is the right to enjoy the benefits of all proceedings which constitute a trial according to "the law of the land." But it cuts deeper than this. The law of the land, applying to all persons impartially, might not afford some of the rights which this clause of the Constitution grants, and secures to the citizen, and compels the State to afford. If, for instance, the State should deprive a person of the benefit of counsel, it would not be due process of law. If it allowed a private person to pass judgment on him for crime, it would not be due process. Within certain limits the State may change its remedies at pleasure, but it must be "with due regard to the land marks established for the protection of the citizen." It must not exercise "arbitrary power, or de-

part from the principles of private right and distributive justice." As declared by the Supreme Court, the XIVth amendment, in its requisition concerning due process, "is not too vague and in-
43 definite to operate as a practical restraint." Hurtado *v.* California, 110 U. S., 516. As there declared, "due process must, in the language of Mr. Webster, be according to his familiar definition, the general law, or law which hears before it condemns, and which proceeds upon inquiry and renders judgment."

The amendment, then, compels the State to provide impartial laws, lawful tribunals, in which to enforce them, which proceed upon fixed principles, and not arbitrarily, before which the accused has the opportunity as well as the right to appear, offer evidence, examine his accusers, and defend himself, and then to be punished or freed by that tribunal, as in its opinion he merits. Nothing less than this will satisfy the Constitution. All this it gives or secures. The circumstance that such rights are recognized or given in the constitution or laws of the State, does not take away any right the constitution gives concerning them, or make them any the less secured by or dependent upon the Constitution of the United States. Vincennes University, *v.* State of Indiana, 14 Howard, 277. Nor, is their constitutional consequence, in this respect, changed in any way, because the State in the exercise of its power in other respects over the right, confers other rights or remedies which, under its jurisdiction, go to make up "its established course of judicial procedure," which things the Constitution of the United States, by force of this provision, also compels the State to afford. The vital, constituent elements of the right, we repeat, are created or secured by the Constitution of the United States. The State may give more, but it cannot give any less. It is apparent, therefore, that there is a marked difference in the sweep of the rights, privileges or immunities which flow respectively from these two clauses. Under the first, when there is no improper discrimination, all that is given is the bounty of the State, and it may contract, or expand, or deny rights at pleasure. The system which constitutes the equal protection of the law is then wholly the creature of the State. As the things forbidden under the equal protection clause can be effected only by State power, it is impossible, in the nature of things, for a private citizen to impair the citizen's enjoyment of the right. Under the due process
44 clause, the vital essence of the grant, and of what it shall consist, flows from the Constitution of the United States itself. It is beyond the power of the State in any way to withhold, alter or impair them. From the very nature of the right, whenever the administration of due process involves the administration of judicial procedure, the State must not only pass fair laws, but through its officers, must do, or cause to be done, certain physical and mental acts in individual cases, which operate directly upon a particular individual, the benefits of which he cannot enjoy unless the officers of the State are permitted to perform them, or cause them to be performed, according to the established course of judicial procedure,

when he is present and asserting his rights. Undoubtedly then, private persons may defeat enjoyment, in the constitutional sense, of the right, privilege or immunity of the citizen to have the State afford him due process of law in many cases.

V. This class of cases presents, perhaps, the only instance in which Congress has power to protect rights of the citizen under the XIVth amendment, by punishing acts of private individuals which defeat the enjoyment of such rights, when the State is not at fault. The power of Congress rests upon and is vindicated by the consideration that the Constitution commands the State to perform a duty for the benefit of the citizen, thereby creating a constitutional right in that citizen to have the State do that thing for him, and that the resistance to the State's efforts to perform the duty frustrates obedience to the mandate of the Constitution, and thus directly cuts from under the citizen all opportunity to enjoy a right, which can be saved in no other way than by performance of the duty by the State. The prohibition put upon the power of the State to deny due process in the administration of justice, certainly creates a right in the citizen. The Constitution makes it a matter of national concern that the States perform the duty of affording due process. This much, at least, arises from the very letter of the amendment. The power given Congress to see that the State performs the duty, naturally includes power to remove obstacles which prevent the State's performing the duty. Has it no power to do so? Must the spirit of the amendment be sacrificed to the letter? What is the spirit of the amendment? It goes to this extent, at least, that the citizen, when the State undertakes to enforce rights of individuals or society against him, shall have actual enjoyment of the benefits of due process of law at its hands. Lawless acts by private individuals which snatch such benefits from the citizen, certainly defy and frustrate the purposes of the amendment. Why has not Congress, which is given power "to enforce" the amendment, power to punish such lawlessness, which so directly and inevitably defeats the purpose of the amendment?

This is not a case of a prohibition upon the power of Congress. The question is not whether Congress has been prohibited from doing anything in this connection, but whether it has been granted authority to do anything. It has been granted authority to enforce the prohibition, in order to secure the results intended to be effected by the prohibition. As was forcibly said in Boyd *v.* United States, 116 U. S., 635, of prohibitions contained in the Constitution, upon the powers of Congress, "A close, literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right as if it was more in sound than in substance. It is the duty of the courts to be watchful of the constitutional right of the citizen." It is said, however, that Congress has no power to conserve the otherwise conceded immunity of the citizen, because the State has vainly endeavored to protect its enjoyment. It is admitted, if State officers had participated in mobbing Maples

or conspired in any way to deprive him of the enjoyment of due process of law at the hands of the State that Congress could legislate against, and punish such acts on their part. *Ex parte* Virginia, 100 U. S., 339. But, it is urged because the State, was not at fault in these respects, that Congress has no power to punish acts of private individuals which destroy the citizen's right or immunity to enjoy due process of law at the hands of the State. It is reasonable to suppose when the protection of the right of the citizen to have due process at the hands of the State, was deemed of such paramount importance as to require the adoption of an amendment to the Constitution of the United States, imposing upon Congress the delicate duty of supervising the discharge of the duty by the State,
46 that the framers of the amendment and the people who adopted it, intended, when the amendment empowered Congress "to enforce" it, that Congress should have no power to punish individuals for doing acts, which, if done by State officers, it was within its authority and duty to punish? It was well known that the enjoyment of the right might be defeated by violence of individuals preventing the State from performing the duty, when it attempted to do so, as well as by faults of State officers. It is, nevertheless, insisted that no power has been conferred by the amendment upon Congress to protect the right to its full extent by dealing with one of the chief evils which destroy its enjoyment. It is insisted such power must be expressly given, or else it does not exist. The answer is furnished by the Supreme Court in two leading decisions, *Ex parte* Yarborough, 110 U. S., 658, and United States *v.* Waddell, 112 U. S., 80. In the former case, it is said: "The proposition that there is no such power, is supported by the old argument, often heard, often repeated, and in this court never assented to, that when a question of the power of Congress arises, the advocate of the power must be able to place his finger on the words which expressly grant it." Here, as there, it is urged because no express power is given to deal with violence exercised on the citizen and the State authorities to prevent "enjoyment of the constitutional right, that no law can be exacted to punish such acts." We repeat of this argument what was said of the same argument in Yarborough's case: "It destroys in one blow in construing the Constitution of the United States the doctrine universally applied to all instruments of writing, that what is applied is as much a part of the instrument as what is expressed. The principle, in its application to the Constitution of the United States more than to almost any other writing, is a necessity, by reason of the inherent inability to put into words all derivative powers, a difficulty which the instrument itself recognizes by conferring on Congress the authority to pass all laws necessary and proper to carry into execution the powers expressly granted, and all other powers vested in the Government or any branch of it by the Constitution. Art. 1, sec. 8, clause 18." In United States *v.* Waddell, 112 U. S. 80, the court, speaking of the enjoyment of a right dependent upon
47 or secured by the constitution or laws, said: "Whenever the acts complained of, are of a character to prevent this, or throw

obstacles in the way of exercising the right, and done for the purpose and with the intent, to injure or oppress a person because he has exercised them, then, because it is a right asserted under the law of the United States, and granted by that law, those acts come within the purview of the statute (section 5508) and of the constitutional power of Congress to make such statute. In the language of the court in *Ex parte* Yarborough, *supra*, the power arises out of the circumstances that the function in which the party is engaged, or the right which he is about to exercise, is dependent on the laws of the United States. In both of these cases, it is the duty of the Government to see that he may exercise this right freely, and protect him from violence while doing so, or on account of so doing." When a State officer is endeavoring to protect a person accused of crime, that he may be dealt with according to law, can there be any doubt that he is engaged in a function which the XIVth amendment to the Constitution commands him to perform? When lawless violence takes a prisoner from the custody of the officer, and puts him to death to prevent the discharge of the duty to protect him, is it not clear that such acts "are of a character to prevent this, or throw obstacles in the way of his exercising this right?" Is it not clear also that such acts by private individuals, injure or oppress the prisoner in the exercise of the right accorded to him by the amendment, to have due process at the hands of the State when held in custody for crime, and be protected while awaiting its further administration?

After anxious deliberation and careful examination of all the authorities, the court cannot resist the conclusion that Congress may protect the enjoyment of rights, privileges or immunities given or secured by the XIVth amendment, against impairment by lawless acts of private individuals, although neither State laws nor State officers are at fault, if such lawlessness takes the form of violence, directly preventing the State or its officers from affording due process to a prisoner, when the State is attempting to do so, provided such legislation does not go beyond prevention of that evil,
48 and does not attempt to alter or interfere with State laws or the authority of its officers in executing them. The argument that Congress has no such power because the amendment is directed against denial of due process by the State, and that there is no denial by the State when neither its laws nor its officers are at fault, ignores the pregnant fact that the amendment creates a right, privilege or immunity of a citizen of the United States, to have enjoyment of the benefit of due process at the hands of the State at least, when the citizen is in its custody and it is proceeding against him for infraction of its laws, and the further equally important fact that such lawless violence of private individuals, by preventing the State's giving the benefit of due process of law when it is endeavoring to do so, directly and inevitably defeats the enjoyment of his right or privilege, created by the Constitution of the United States, to have enjoyment of the benefit of due process at the hands of the

State, and thus fatally impairs enjoyment of the right, privilege or immunity. It is the settled and unbroken doctrine of the Supreme Court of the United States, that a right, "whether created by the Constitution of the United States, or only guaranteed by it, even without any express delegation of power, may be protected by Congress in such manner and form as Congress in the legitimate exercise of its legislative discretion shall provide." This doctrine which was emphatically enunciated in the great case of Prigg *v.* Pennsylvania, 16 Peters, 539, has since been constantly adhered to. Strauder *v.* West Virginia, 100 U. S., 311; Tennessee *v.* Davis, 100 U. S., 257; *United States v. Reese*, 92 U. S., 214; *Motes v. United States*, 458.

The only way to escape the application of this doctrine to this case, is to show either that no right, privilege or immunity is given by the XIVth amendment to the citizen to enjoy due process at the hands of the State, when it is endeavoring to afford it, or that violence directed against its officers which prevents them from doing so, does not deprive the citizen of the enjoyment of the benefits of the discharge of the duty by the State. The decisions of the
49 Supreme Court put it beyond the pale of controversy that the prohibitions upon State power in the XIVth amendment, create rights, privileges and immunities of citizens of the United States. As said in Strauder *v.* West Virginia, *supra*, "the XIVth amendment makes no attempt to enumerate the rights it is designed to protect. It speaks in general terms and these are as comprehensive as possible. Its language is prohibitory, but every prohibition implies the existence of rights and immunities." The right, privilege or immunity being thus established, the denial of the right of Congress to protect it, must rest upon the false premise that when a right or privilege is given to the citizen by the Constitution to have the State do certain things for him to secure a particular right for him, and the State is endeavoring to accord the enjoyment of that right, that acts of private individuals which directly, violently and intentionally, prevent the State from performing the duty, do not prevent the citizen from having the benefit of the performance of that duty at the hands of the State. To state the proposition is to answer it. Who will seriously contend, where the law puts the duty on B to render a particular service to A, that A may enjoy a right which the law intends thereby to secure to him, and which A can enjoy only by the performance of the duty by B, that violence directed towards B, which prevents his rendering the service to A, does not defeat A's enjoyment of that right? The question here, whether enjoyment of any right, privilege or immunity of the citizen under the XIVth amendment is violated, when the State holds a prisoner on accusation of crime, and is endeavoring to afford him due process of law, and is prevented by violence or private individuals from doing so, has never been before the Supreme Court. That court has been careful to avoid defining the privileges and immunities of citizens of the United States until "some case involving these

privileges makes it necessary to do so." Slaughter House case, 16 Wallace, 79. General expressions in opinions not raising the question here, are not in anywise binding, in determining whether the acts charged in the indictment constitute a violation of any right, privilege or immunity of a citizen of the United States. It suffices to say of those opinions, without citing them, that they combatted the power of Congress, under this amendment, to enter upon
50 plenary legislation, altering or interfering with State laws, when neither the State nor its officers are at fault, and that they do not touch upon the power of Congress by appropriate legislation to protect any immunities or rights which the amendment gave, although the State was not at fault, against the acts of lawless individuals. The Supreme Court itself has repeatedly declared "that any opinion given here or elsewhere cannot be relied upon as binding authority, unless the case calls for its expression." Carroll *v.* Carroll, 16 Howard, 275; Bardes *v.* Hawarden, 178 U. S., 534; Bryan *v.* Bernheimer, 181 U. S. 197; Cohens *v.* Virginia, 6 Wheaton, 399.

The court does not doubt that Congress has power to punish the acts charged in the indictment, and that sections 5508 and 5509 of the Revised Statutes apply to them, and are "appropriate" legislation to that end. The result is that the writ must be discharged, and the prisoner remanded to the custody of the marshal.

51 In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

Certificate to the Supreme Court of the United States.

Ex Parte THOMAS RIGGINS.

Thomas Riggins, the petitioner, having prayed for and obtained an appeal from the judgment of this court rendered in this cause on the 26th day of October, 1904, wherein the court discharged the writ of *habeas corpus* sued out by him, and remanded the petitioner to the custody of the marshal, which appeal is returnable to the present term of the Supreme Court of the United States—this court now, under the provisions of section 5 of an act of Congress, approved March 3rd, 1891, entitled: "An act to establish circuit courts of appeal, and to define and regulate in certain causes the jurisdiction of the courts of the United States, and for other purposes," hereby certifies to the honorable, the Supreme Court of the United States, the following questions of jurisdiction:

1. Has this court jurisdiction, under the Constitution and laws of the United States, to try and punish white men, upon proper indictment legally preferred and returned against them, for conspiring to deprive, and, in pursuance of such conspiracy, depriving a citizen of the United States of African descent and of color, legally held in

jail by the State authorities for trial upon accusation duly preferred against him of the commission of a crime against the laws of the State, of the enjoyment and benefit of a trial in the courts of the State according to the settled course of judicial procedure therein, when such conspiracy is executed by forcibly taking such prisoner a citizen of the United States from the custody of the State officers and afterwards murdering him, and in that way, preventing the State from affording him such trial, when by the laws of the State the right to enjoy such trial is secured to white citizens so accused and held by the State, and when such conspiracy was formed and executed because of the race of such negro citizen of the United States, and with the intent and purpose for that reason to deprive him of the enjoyment and benefit of such trial in the courts
52 of the State?

2. Is there any valid legislation of Congress which gives this court jurisdiction to try and punish white men, upon proper indictment, lawfully preferred against them, and duly returned into court, for conspiring to deprive a citizen of the United States of African descent and of color, then confined by the State authorities upon accusation preferred against him by the State of the commission of a crime by him against the laws of such State, of the enjoyment of the benefits of a trial by jury in the courts of the State according to the settled course of judicial procedure therein, when the conspiracy by such white men against such negro citizen of the United States was formed because of race malevolence, and with the intent and purpose, because of such negro citizen's race, he being a citizen of the United States, to deprive him of the enjoyment of the civil rights to such trial by jury in the State courts, which is a right accorded, under like circumstances, to all white citizens therein by the laws thereof?

3. When a citizen of the United States, no matter to what race he belongs, is taken into custody and imprisoned upon accusation lawfully preferred against him by the State of the commission of a felony against its laws, and held for trial in the courts, that he may be punished if guilty and discharged if innocent, and the sheriff and a State military organization, which he has summoned to his assistance, endeavor to safely keep such citizen of the United States that he may be so tried, and a mob overpowers them and forcibly takes such citizen of the United States from the jail where he is confined for trial, and murders him, before the State has afforded such citizen of the United States a trial, with the design and purpose to punish such citizen of the United States for the crime charged against him without lawful trial and to prevent the enjoyment by such citizen of the United States of the benefits of a trial by due course of judicial procedure in the courts of the State, which is a right secured by the laws of the State to all persons so accused of crime, do the individuals who aid in forcibly taking the prisoner fromhthe custody of the State authorities and murder him with the

intent and purpose aforesaid, to prevent his enjoyment of a
53 trial by due course of judicial procedure in the courts of the State, commit any offense against the laws of the United States, which this court has jurisdiction to try and punish, upon proper indictment legally preferred and returned against the participants in such mob?

4. When the State, which has provided impartial laws and proper tribunals and modes for administering justice to persons accused of crime against its laws, holds a citizen of the United States in actual custody for the purpose of giving him a trial by due process of law on accusation of crime preferred against him by the State, and the State authorities endeavor to safely keep and protect such citizen of the United States that he may enjoy the benefit of such trial in the courts of the State, and the State authorities are overpowered and prevented from safely keeping such citizen of the United States and prevented from affording such trial, by due course of judicial procedure in the courts of the State, by private persons, who by unlawful concert among themselves, forcibly take the citizen of the United States, so in custody, from the possession and protection of the State authorities, and put him to death, with the intent and purpose to prevent his enjoying a trial by due process of law, and to prevent the State from affording him such trial, do such private individuals, who thus prevent the State from affording such citizen of the United States a trial by due process of law injure, oppress, threaten or intimidate such citizen of the United States in the free exercise or enjoyment of a right or privilege secured to him by the Constitution or laws of the United States, within the meaning of sections 5508 and 5509 of the Revised Statutes of the United States, so as to give this court jurisdiction to try and punish such private individuals for the conspiracy and acts done in pursuance thereof, upon proper indictment lawfully preferred and duly returned against them?

5. When a citizen of the United States, lawfully confined by the State authorities for trial upon accusation of crime against the laws of the State, is taken by lawless private individuals from the actual custody of the State before such trial is afforded such citizen
54 of the United States, and put to death by such private individuals, pursuant to a conspiracy formed and executed with the intent and design to prevent such citizen of the United States *fr* from enjoying such trial at the hands of the State, which is a right secured by the law of the State to all persons accused of crime, does such conpiracy and murder done in the execution and purpose of the conspiracy deprive such citizen of the United States of the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or injure or oppress him in the enjoyment of any right or privilege or immunity secured to him by the Constitution or laws of the United States, within the purview of sections 5508 and 5509 of the Revised Statutes, so as to give this court jurisdiction, upon proper indictment duly returned

against the offenders, to try and punish such conspirators for the conspiracy and acts done in furtherance thereof?

6. When the settled course of judicial procedure in a State for administering justice to all persons accused of the commission of a crime against the laws of the State, requires among other things, that the accused shall be safely kept until brought before the court, the impanelling of a jury for his trial, the hearing of witnesses and argument of counsel in behalf of the accused, the instruction of a jury as to the law of the case by a judge, the seclusion of the jury from outside interference until they return a verdict in open court in the presence of the prisoner, the passing of judgment upon the verdict, suspending execution of the sentence until it can be heard by the appellate court, in event he is found guilty, and the State provides impartial law, proper tribunals, and sufficient modes for according these rights to the accused, and the officers of the State are not in fault in executing such laws, is there any law of the United States which, under such circumstances, makes it a criminal offense against the United States, for private individuals to assail the State authorities, and forcibly take from their possession and protection a citizen of the United States, who is held by them for trial upon accusation of crime against the laws of the State, before he has enjoyed the benefit of such trial, and murder such citizen of the United
55 States, with the intent and purpose to prevent, and by such murder preventing, the State from affording such prisoner the enjoyment of a trial by due course of judicial procedure, and thereby defeating the right of such citizen of the United States to enjoy the benefit of such trial, so that this court has jurisdiction to try and punish the offenders upon indictment duly and legally preferred and returned against them?

7. Is it not a right, privilege or immunity of a citizen of the United States, accorded by, arising under, or dependent upon, the Constitution, when such citizen of the United States is accused of crime against the laws of the State, and held in confinement by the State for trial according to the law of the land upon such accusation, to have the State afford him the enjoyment of a trial by due process of law, so protected by the laws of the United States that private individuals, who, by unlawful concert among themselves, and by physical violence exerted against the life of the accused and the officers of the State, when they are endeavoring to discharge the duty of affording him a trial on accusation of crime by due course of judicial procedure, prevent the State from so doing, and thereby deprive the accused of the enjoyment of a trial according to the settled course of judicial procedure in the State, can be proceeded against, and punished, upon indictment lawfully preferred and returned against them, for conspiring to injure or oppress such citizen of the United States, in the free exercise or enjoyment of a right or privilege secured to him by the Constitution or laws of the United States?

8. Do sections 5508 and 5509 of the Revised Statutes of the United

States apply to acts of private individuals who, pursuant to a conspiracy, lawlessly take a citizen of the United States, who is held in actual custody by the State authorities for trial upon due accusation of crime against its laws, and put such citizen of the United States to death, with the intent and design to prevent his enjoyment of such trial by due course of judicial procedure, which is a right accorded by the laws of the State to all persons, when the State has furnished proper tribunals and laws to afford such citizen a trial by due process of law, and is not at fault in executing such
56 laws, so as to give this court jurisdiction, upon proper indictment duly returned against them, to try and punish them for such conspiracy and acts done in pursuance thereof?

9. Does the third count of the indictment charge any offense against the laws of the United States, which this court has jurisdiction to try and punish?

10. Does the sixth count of the indictment charge any offense against the laws of the United States, which this court has jurisdiction to try and punish?

11. Does the fourth count of the indictment charge any offense against the laws of the United States, which this court has jurisdiction to try and punish?

Done and certified in open court, this 26th day of October, A. D., 1904.

THOS. G. JONES,

U. S. Dist. Judge for Northern and Middle Districts of Alabama, Presiding and Holding the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

Endorsed: Filed October 26th, 1904. Chas. J. Allison, clerk.

57 In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

UNITED STATES, Plaintiff,
vs.
THOMAS M. RIGGINS, Defendant.

To the United States of America:

You are hereby cited and admonished to be and appear at the present term of the Supreme Court of the United States, held in the city of Washington, the term thereof commencing on the second Monday in October 1904, pursuant to an appeal filed in this court, wherein the defendant, Thomas M. Riggins is appellant and The United States is respondent, to show cause, if any there be, by the judgment of said court mentioned in the appeal should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 26th day of October, 1904.

THOS. G. JONES,
Judge Presiding.

I hereby acknowledge due and legal service in open court of the foregoing citation, this 26th day of October, 1904.

THOS. R. ROUHAC,
U. S. District Att'y for the Northern District of Alabama.

Filed in open court, Octo. 26, 1904.
CHAS. J. ALLISON, Clerk.

58 UNITED STATES OF AMERICA,
Northern District of Alabama, Northern Division.

I, Charles J. Allison, clerk of the circuit court of the United States of America in and for said division of said district, do hereby certify that the foregoing is a true, full, and complete copy of all petitions and orders filed, and proceedings had in the cause of The United States *vs.* Thomas M. Riggins, on appeal to the Supreme Court of the United States, wherein Thomas M. Riggins is appellant, and The United States is appellee, as fully as the same does appear of record and from the files in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court, at office in the city of Huntsville, in said district, this twenty-sixth day of December, 1904.

{Seal United States Circuit Court, District of Alabama, Northern Division.}

CHAS. J. ALLISON,
Clerk of the U. S. Circuit Court, Northern Division,
Northern District of Alabama.

Endorsed on cover: File No. 19,616. N. Alabama C. C. U. S. Term No. 169. Thomas M. Riggins, appellant, *vs.* The United States. Filed January 27th, 1905. File No. 19,616.